

REMARKS

The acceptance of the terminal disclaimer is acknowledged.

The refusal to accept the previously submitted declaration under 37 C.F.R. 1.131 as effective to withdraw the rejection over DeCapua et al. publication '757 is requested to be reconsidered. The rejection was under 35 U.S.C. 102(e). 706.02(f)(2) (item 1) MPEP referencing heading ¶ 715.01 at the third paragraph specifies that the rejection can be overcome by a declaration under 37 C.F.R. 1.132 or 37 C.F.R. 1.131. See 715 MPEP "Situations where 37 C.F.R. 1.131 Affidavits or Declarations can be used." Accordingly, Applicant acted properly in overcoming the rejection by way of a declaration under 37 C.F.R. 1.131. Both the publication and the instant application are owned by Stant Manufacturing Inc. (copies of the recordal assignments are attached). The claims of the publication and the instant application do not claim the "same patentable invention." In the previous Office Action (September 9, 2003) reliance was on disclosure not claimed subject matter. This Office Action references 715.05 MPEP which is directed to "NON-COMMONLY" owned, where as MPEP 715.01(b) and 715.01(c) CO-AUTHORSHIP relates to commonly owned and indicates a declaration under 37 C.F.R. 1.131 is appropriate. See also MPEP 715.03 "A Species Cain." The reference to MPEP 178 is improper as the rejection herein is anticipation and not obviousness.

Attached hereto is a new declaration signed by the inventor.

Reconsideration of the rejection of claims 1-13, 22 and 27 as being anticipated by DeCapua et al. (Pub. '757) is requested in view of the attached 37 C.F.R. 1.131 declaration.

Reconsideration of the rejection of claims 1-13, 22 and 27 under 35 U.S.C. 101 in view of claims 11-12, 16 and 18 of co-pending application 10/079,163 is requested. The four claims 11-12, 16 and 18 all depend from claim 1 of the 10/079,163 application and are not directed to the invention of the instant application. Claim 1 references:

"A passage therein communicating with an external portion of the tank...

A diaphragm being a generally CIRCULAR diaphragm generally CONCENTRIC with the passage in the house ..."

Movement of the float TOWARD the passage causing a portion of the flexible diaphragm to CONTACT A SURFACE of the HOUSING -- AT LEAST PROXIMATE to the passage and the vent ...

These are features not found in the instant application, but rather are features of the figs. 1-13 species. Thus the claims identified are not directed to the same invention as the application. Further, the claims of the application have limitations such as the "partitions" not readable on figs. 1-13 of the printed application. This evidences further that the two sets of claims are not directed to the same invention. Accordingly, reconsideration of this rejection is requested. Note further, since the two sets are directed to different inventions, either the declaration under 37 C.F.R. 1.31 on the terminal disclaimer removes the rejection if made under the obviousness standard.

In view of the above, the application is in condition for allowance and such is promptly requested.

It is respectfully requested, if necessary to effect a timely response, that this paper be considered as a Petition for an Extension of Time sufficient to effect a timely response and shortages and other fees be charged, or any overpayment in fees be credited, to the Account of Barnes & Thornburg, Deposit Account No. 10-0435 (3177-69461).

Respectfully submitted,
BARNES & THORNBURG



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